

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment to the Commission's)
Regulatory Policies Governing) IB Docket No. 95-41
Domestic Fixed Satellites and)
Separate International Satellite Systems)

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COMMENTS OF DIRECTV, INC.

DIRECTV, Inc. ("DIRECTV") hereby submits the following comments in response to the above-captioned Notice of Proposed Rulemaking.^{1/}

DIRECTV supports the Commission's efforts to eliminate the distinction between its Transborder and Separate Systems policies, and to impose an integrated regulatory regime that will encompass all licensed geostationary fixed-service satellites.^{2/} The Commission's proposal is pro-competitive and in the public interest. It would allow all U.S. FSS satellites to provide both domestic and international services within their coverage beams on a co-primary basis, in the process eliminating outdated regulations that impair FSS operators' ability to meet their customers' communications needs or to adapt their businesses to changing market conditions.^{3/}

^{1/} See In the Matter of Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Systems, Notice of Proposed Rulemaking, IB Docket No. 95-41 (April 25, 1995) ("Notice").

^{2/} DIRECTV fully supports the comments being filed today by its affiliate, Hughes Communications Galaxy, Inc.

^{3/} See Notice at ¶ 1.

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DIRECTV is submitting these brief comments because as a second-level issue in the Notice, the Commission queries whether its proposal to allow increased flexibility in the provision of domestic or international services should be "extended" to other U.S.-licensed satellite services such as mobile-satellite services ("MSS") and direct broadcast satellite ("DBS") services. The Commission has acknowledged that this proposal would allow these services to "provide both domestic and international service without the regulatory delays associated with a license modification request," and reasons that so doing would "foster the same goals as eliminating geographic restrictions for U.S. fixed-satellites - increased competition, increased consumer choice, and further development of the global information infrastructure."^{4/} The Commission asks, however, whether there are considerations unique to these services that might mandate a different conclusion.

With respect to DBS, the answer is that the very international/domestic flexibility that Commission has proposed to introduce into the FSS regime is flexibility that DBS licensees already possess. As with the Commission's FSS proposal, such flexibility should continue to be promoted and expanded as DBS service develops, for all of the reasons cited in the Notice.

Because of the unique development and status of DBS as an emerging technology, the Commission has imposed a flexible regulatory regime on U.S. DBS providers.^{5/} From the standpoint of the present rulemaking proceeding, one consequence

^{4/} Id. at ¶¶ 37-38 (footnotes omitted).

^{5/} See Direct Broadcast Satellite Service, 90 FCC 2d 676, 698 (1982) (observing that basic policy for DBS "should be to maintain an open and flexible approach that will allow the business judgements of the individual applicants to shape the character of the services

of this flexibility has been that DBS licensees have never been constrained by the Transborder and Separate System policies that the Commission is now reconciling with respect to FSS service.^{6/} Section 100.3 of the Commission's rules, for example, which defines the DBS service, contains no language limiting DBS licenses to domestic use. While it is true that the terms of U.S. DBS licenses authorize specified coverage areas of the continental United States ("CONUS"), as the Notice recognizes, U.S. DBS licensees (unlike FSS providers) have never been subject to the Commission's Transborder Policy,^{7/} and are permitted to provide service to all points within satellite footprints -- both domestic and international.^{8/} Similarly, the Commission's Separate Systems Policy is inapplicable to

offered," and that "such an open skies policy would encourage the submission of a wide variety of proposals and thereby achieve the full benefits of experimentation with this new service").

^{6/} Contrary to the suggestion in the Notice, there is nothing in the Region 2 plan adopted at the 1983 Regional Administrative Conference which supports imposing any domestic limitations on DBS/BSS service. See generally Regulatory Policy Regarding the Direct Broadcast Satellite Service, 94 FCC 2d 741, 744, 752 (1983).

^{7/} Id. at ¶ 37. The reason is that the limitations of the Commission's Transborder Policy have been premised on the obligations specified in Article XIV(d) of the INTELSAT treaty. See Notice at ¶ 5. DBS services, or "broadcasting satellite services" ("BSS") as they are known internationally, are defined to be "specialized" communications under the INTELSAT agreement, such that they are not subject to economic harm coordination requirement of Article XIV(d). See INTELSAT Legal Opinion, reprinted in Hearings Before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives, 98th Congress, Serial No. 98-190 (1984), at 620-24.

^{8/} This situation is analogous to the unregulated treatment accorded U.S. terrestrial broadcasters on the Canadian and Mexican borders. No additional U.S. regulatory authority is required for television stations whose signals "spill over" into those countries, e.g., a Detroit television station that broadcasts into Canada.

U.S. DBS licensees because their systems do not meet the definition of "separate systems."^{9/}

DIRECTV believes that the Commission's proposals in the Notice are on the right track in harmonizing its satellite regulatory regimes in a manner that reflects and accommodates the global needs of telecommunications today. The Commission has always recognized the potential for DBS "to be a powerful tool both domestically and internationally,"^{10/} and has promoted that potential through its flexible regulatory regime. The proposals in the Notice only underscore the wisdom of that approach.

Both FSS and DBS operators require the flexibility to make business judgments to serve areas that either lack necessary satellite services or would benefit from the existence of new competitive services that would make more efficient use of the orbit spectrum resource. This is particularly important as other countries and organizations expand their own satellite systems. Accordingly, DIRECTV urges the Commission to continue to develop policies that encourage the growth of U.S.-based global satellite systems in a manner that promotes our nation's international efficiency and competitiveness.

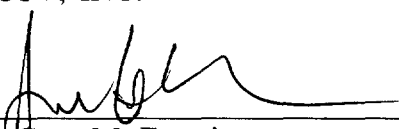
^{9/} See Comsat v. FCC, 836 F.2d 623, 627 (1988); Foreign Relations Authorization Act, Pub. L. 99-93, § 146(g), 99 Stat. 405, 425-26 (1985). As DBSC has observed, even if the Separate Systems policy were applicable to U.S. DBS applicants, no economic harm coordination with INTELSAT would be required because DBS licensees do not offer interconnected service of any magnitude. See Application of Direct Broadcasting Satellite Corporation to Provide International DBS Service, DBS-88-08/94-13DR (1994), at 12-13, n.9.

^{10/} Direct Broadcast Satellite Service, 90 FCC 2d at 728 (Separate Statement of Chairman Mark S. Fowler).

Respectfully submitted,

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